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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,011	04/13/2004	Wayne Elliott Dolezal	74079-304056	4695
25764	7590	08/11/2005	EXAMINER	
FAEGRE & BENSON LLP PATENT DOCKETING 2200 WELLS FARGO CENTER MINNEAPOLIS, MN 55402			LAYNO, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,011

Applicant(s)

DOLEZAL, WAYNE ELLIOTT

Examiner

Benjamin H. Layno

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/28/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowicz in view of Pick 3 Virginia Lottery.


The patent to Markowicz discloses a prize pool for a lotto game played among a plurality of member lotteries. The plurality of member lotteries are from diverse groups, various state lotteries, "State A", "State B", "State C", etc, col. 4, lines 1-25. Markowicz comprises a system of prize levels including a jackpot prize, col. 2, lines 66-68, and a subordinate prize level, col. 3, lines 1-2. A first member lottery is a state lottery, and a second member lottery is a national lottery, col. 4, line 26 to col. 5, line 63. Fig. 3 shows a system in which the network lottery computer (e.g. national lottery computer) communicates with the state computers 22. Thus, all member lotteries are eligible for the national lottery jackpot prize, col. 5, lines 38-63. The first member lottery (state lottery) awards subordinate prizes on a pari-mutuel basis, col. 4, lines 21-23. The second member lottery (national lottery) awards subordinate prizes on a pari-mutuel basis, see table of Fig. 5, and col. 5, lines 29-32. Note, the subordinate prizes are fixed percentage of the pool, Fig. 5.

Pick 3 Virginia Lottery teaches that it is known in first member lotteries (state lotteries) to award subordinate prizes having a pre-determined **fixed** monetary value (e.g. "Exact Order" Prize \$500, "Any Order" Prize \$80). Fixed monetary value awards are well known in state lotteries. In view of such teaching, it would have been obvious to modify Markowicz lotto game by providing fixed monetary value awards to the first member lotteries (state lotteries). This modification would have been a state lottery organization business decision which is always obvious in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3711